

**REMARKS/ARGUMENTS**

Claims 1-11 were pending in the application. By this amendment, claims 1, 5, 6 and 10 are being amended and claims 3, 4, 8, 9 and 11 are being canceled, to advance the prosecution of the application. No new matters are involved.

On page 2 of the Office Action, the title of the invention is objected to as not being descriptive. More specifically, it is said that the title should be amended to positively identify what determination is made. In response, applicant is amending the title as to read as follows: "IMAGE PROCESSING DEVICE, IMAGE PROCESSING METHOD, AND IMAGE PROCESSING PROGRAM PRODUCT FOR MAKING DETERMINATION OF PRESENCE OF PLURAL PEAKS IN A SPECTRUM OF A PREDETERMINED PHYSICAL QUANTITY IN IMAGE DATA". As so amended, the title is submitted to be clearly indicative of the invention to which the claims are directed.

On page 2 of the Office Action, claims 5, 6 and 10 are objected to under 35 U.S.C. § 1.75(a) as failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. Claims 5, 6 and 10 are being amended to obviate the basis for such objections as well as to more clearly distinguishing patentably over the prior art. As so amended, claims 5, 6 and 10 are submitted to be clear and definite.

On page 4, claim 11 is rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. In response, claim 11 is being canceled, thereby obviating this rejection.

On page 5 of the Office Action, claims 2, 3, 4, 6, 7, 8, 9 and 10 (the rejection refers to claim 10 but later discussion refers to claim 11) as being anticipated by U.S. Patent 6,040,860 of Tamura. On page 10 of the Office Action, claims 5 and 10 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Tamura '860 in

view of U.S. Patent 7,006,668 of Iguchi, et al. These rejections are respectfully traversed with respect to claims 1, 2, 5-7 and 10 which remain in the application.

Claims 5 and 10 have been amended to change the dependency thereof to claims 1 and 6 respectively. These claims, as well as the other claims still pending in the application, are submitted to clearly distinguish patentably over the prior art.

In rejecting claims 1, 2, 6 and 7 under 35 U.S.C. § 102(b) as anticipated by Tamura '860, it is pointed out in the Office Action that Tamura '860 discloses a full-screen averaging circuit 105a for obtaining an average luminance of image, and a center-weighted averaging circuit 105b (Fig. 6A and column A, lines 4-13) for obtaining an average luminance of center of image, and that AGC is controlled by an AGC control circuit 106 based on values from these circuits (column A, lines 13-21). However, in Tamura '860, it can be considered that an extraction process for extracting a peak included in a luminance histogram and a determination process for determining a degree of compensation in extracting the peak are performed respectively by a feature quantity extraction circuit 107 and an image evaluation means 108. Therefore, in order to determine a threshold value (corresponding to the first threshold value and the second threshold value in the present application) used for peak extraction based on an average value of physical quantity, a processed result of the average luminance of image obtained by the full-screen averaging circuit 105a or the average luminance of the center of image obtained by the center-weighted averaging circuit 105b are required to be input into either one of the feature quantity extraction circuit 107 or the image evaluation means 108.

Furthermore, in Tamura '860, the average luminance of image obtained by the full-screen averaging circuit 105a and the average luminance of the center of image obtained by the center-weighted averaging circuit 105b are used only for a process in an AGC control at the input side. Tamura '860 does not disclose a

configuration for inputting these values into either one of the feature quantity extraction circuit 107 or the image evaluation means 108. In other words, Tamura '860 does not disclose a configuration for determining a threshold value for a process at the feature quantity extraction circuit 107 or the image evaluation means 108 based on the average luminance of the image or the average luminance of the center of image.

Claim 1 defines an image processing device requiring image data to be processed, extracting a spectrum of a predetermined physical quantity in said image data, making a determination as to whether or not said spectrum has a plurality of peaks, and performing a process based on a result of the determination. The image processing device of claim 1, as amended herein, is further characterized in terms of "the determination as to whether or not said spectrum has a plurality of peaks is made based on, with respect to said spectrum, an integral value of a range where said physical quantity is no greater than a first threshold, and an integral value of a range where said physical quantity is no smaller than a second threshold which is greater than said first threshold; and at least one of said first and second thresholds is set based on an average level of said physical quantity".

Claim 6 directed to an image processing method is being amended to add limitations similar to those being added to claim 1. Therefore, claims 1 and 6 are submitted to clearly distinguish patentably over the cited references. Claims 2 and 5 depend from and contain all of the limitations of claim 1, and claims 7 and 10 depend from and contain all of the limitations of claim 6. Therefore, these claims are also submitted to clearly distinguish patentably over the cited art.

In conclusion, claims 1, 2, 5-7 and 10 are submitted to clearly distinguish patentably over the prior art for the reasons set forth above. Therefore, reconsideration and allowance are respectfully requested.

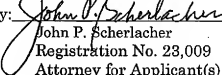
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If there are any fees due in connection with the filing of this response, please charge the fees to our Deposit Account No. 50-1314.

Respectfully submitted,  
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